

FILED
JUN 17 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEDIDIAH AUSTIN SHOEMAKER,

No. C 11-2674 SBA (PR)

Petitioner,

**ORDER GRANTING IMPLIED MOTION
TO RE-OPEN CASE, TO LIFT STAY,
AND TO AMEND STAYED PETITION;
ADOPTING INSTRUCTIONS IN
FEBRUARY 14, 2013 ORDER TO SHOW
CAUSE FILED IN CASE NUMBER C 12-
4773 SBA (PR); AND SETTING NEW
BRIEFING SCHEDULE**

v.

CONNIE GIPSON,

Respondent.

JEDIDIAH AUSTIN SHOEMAKER,

No. C 12-4773 SBA (PR)

Petitioner,

**ORDER OF DISMISSAL AS FILED IN
ERROR**

v.

CONNIE GIPSON,

Respondent.

On June 3, 2011, Petitioner, a state prisoner, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in Case No. C 11-2674 SBA (PR) (2011 Case). In an Order dated May 4, 2012, the Court stayed the proceedings to allow Petitioner to exhaust state judicial remedies as to his unexhausted prosecutorial misconduct claim. (Dkt. 13 in 2011 Case.) The 2011 Case was administratively closed until Petitioner received a final decision from the highest state court, and then moved to re-open the action, lift the stay, and amend the stayed petition to add the newly-exhausted prosecutorial misconduct claim.

On September 12, 2012, Petitioner filed another petition, but he did not include the case number for the 2011 Case on the form. As a result, the Clerk of the Court opened a new habeas action, Case No. C 12-4773 SBA (PR) (2012 Case). In an Order dated February 14, 2013, the Court directed Respondent to show cause why the petition in the 2012 Case should not be granted. (Dkt. 7 in 2012 Case.) On June 11, 2013, Respondent filed a motion for an extension of time up to and including July 15, 2013, in which to file an answer to the petition.

Although Petitioner failed to follow the instructions to move to re-open the 2011 Case, to lift the stay, and to amend the stayed petition, the Court liberally construes his filing of a new petition as an implied motion to do so. Therefore, this implied motion is GRANTED. The Clerk is directed to re-open the 2011 Case, to lift the stay, and to designate the new petition filed in the 2012 Case as the "Amended Petition" in the 2011 Case. The Court's instructions in its February 14, 2013 Order to show cause in the 2012 Case shall be adopted in the 2011 Case. Finally, Respondent's pending motion for an extension of time to file an answer is GRANTED, and the parties shall abide by the new briefing schedule outlined below.

In light of the foregoing, the Court orders as follows:

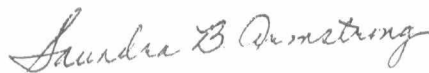
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1 answer to the Amended Petition will be extended up to and until **July 15, 2013**. Petitioner shall file
2 with the Court and serve on Respondent a traverse no later than **sixty (60) days** of receipt of the
3 answer. Should Petitioner fail to do so, the Amended Petition will be deemed submitted and ready
4 for decision **sixty (60) days** after the date Petitioner is served with Respondent's answer.

5 6. This Order terminates Respondent's pending motion for extension of time, which will
6 be filed in Case No. C 11-2674 SBA (PR).

7 IT IS SO ORDERED.

8 DATED: 6/17/13



SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JEDIDIAH AUSTIN SHOEMAKER,
Plaintiff,

Case Number: CV12-04773 SBA

CERTIFICATE OF SERVICE

v.

CONNIE GIPSON et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 17, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jedidiah Austion Shoemaker G-16403
California State Prison - Solano
P.O. Box 4000
Vacaville, CA 95696-4000

Dated: June 17, 2013

Richard W. Wieking, Clerk
By: Jessie Mosley, Deputy Clerk